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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

IN RE COLLEGIATE ATHLETE NIL
LITIGATION

Case No. 4:20-cv-03919-CW

MENKE-WEIDENBACH OBJECTORS' RESPONSE TO THE FOURTH AMENDED SETTLEMENT AGREEMENT

Hon. Claudia Wilken

1 On April 23, 2025, the Court issued an order rejecting final approval of the Third
 2 Amended Settlement. It found that a “significant number of [class] members” have been removed
 3 or would be removed from rosters because of the settlement’s roster-cap provisions. Dkt. 948 at
 4 2. That outcome, the Court concluded, is “harm[ful]” and “not fair to those class members.” *Id.*
 5 at 2-3. Because the settlement was “not fair and reasonable,” the Court “[could not] approve the
 6 settlement agreement in its current form.” *Id.* at 3.

7 The Court directed the parties to “modify the settlement agreement so that members of the
 8 Injunctive Relief Settlement Class will **not be harmed** by the immediate implementation of the
 9 roster limits provisions.” *Id.* at 4 (emphasis added). One way to do that, the Court suggested, is
 10 to “modify the settlement agreement to ensure that **no members** of the Injunctive Relief
 11 Settlement Class who have or had a roster spot will lose it as a result of the immediate
 12 implementation of the” roster limits. *Id.* (emphasis added).

13 The Fourth Amended Settlement does not meet that objective. It fails in numerous
 14 respects:

15 **First**, the Fourth Amended Settlement does not restore student-athletes to the roster spots
 16 they lost because of the settlement’s roster limits. A member institution’s decision to restore a
 17 student-athlete to his or her prior roster spot is **entirely optional**. Dkt. 958-1 at 72-73. Indeed,
 18 member institutions have discretion to retain the roster limits. *Id.*

19 **Second**, the Fourth Amended Settlement does not restore the status quo for student-
 20 athletes who transferred to new schools after being cut. The settlement permits transfer student-
 21 athletes to return to their prior schools, but does not require the prior schools to accept them. Dkt.
 22 958-1 at 73.

23 **Third**, the Fourth Amended Settlement allows member institutions total discretion to
 24 determine which student-athletes were cut because of the roster limits. Dkt. 958-1 at 56-57, 72-
 25 73. It provides student-athletes with no opportunity to challenge those decisions or prove that
 26 roster caps, rather than something else, caused them to be cut.

1 **Fourth**, the Fourth Amended Settlement releases all claims related to implementation of
 2 the roster limits, including damages claims for any harm resulting from Defendants' premature
 3 implementation of the roster caps.

4 This settlement and these defects, however, can be fixed. In fact, objectors offered
 5 numerous proposed modifications to the mediator that would have addressed these defects,
 6 ensuring no class members were harmed by immediate implementation of the roster caps. For
 7 example, under objectors' proposal:

- 8 • Student-athletes currently on a roster (or promised a roster spot) would not count
 toward their teams' roster caps for the duration of their collegiate careers.
- 9 • Student-athletes who had been cut to meet roster caps would be restored to their roster
 spot, even if they had transferred to another school. Member institutions would still
 have discretion to cut athletes for legitimate reasons unrelated to the roster cap, such
 as conduct violations and poor athletic or academic performance.¹
- 10 • If member institutions disputed that a student-athlete was cut to meet roster caps, the
 student-athlete could arbitrate that disagreement using the settlement's existing
 arbitration provisions. *See Dkt. 958-1 at 77-80 (arbitration provisions).*
- 11 • The settlement would not release claims arising from Defendants' premature
 implementation of the roster caps, allowing class members to recover, through
 arbitration, losses associated with schools' decision to implement the settlement
 before this Court approved it. *See Dkt. 948 at 4.*

12 The settlement remains unfair. A settlement like this one, which vests Defendants with
 13 "discretion" to provide relief – or not – is no settlement at all. Indeed, numerous Objectors are
 14 hearing that schools have no intention of relaxing roster limits at all, leaving many student-
 15 athletes in the same position as under the settlement this Court rejected as unfair. *See Ex. A*
 16 ("Wiegand Decl.") ¶3.

27

 28 ¹ Objectors do not seek "guaranteed" roster spots, as Defendants suggest. Dkt. 959 at 2-3. They simply
 seek protections against being removed from a roster to meet a roster cap.

1 Objectors' proposed modifications would exempt players on rosters and high school
 2 students who had been promised roster spots from the roster caps. Thus, the roster caps would
 3 apply to future students and effectively be implemented fully over time as those exempted
 4 students graduate or age out of their eligibility. Coaches and schools would otherwise retain their
 5 ability to manage their rosters. Objectors also offered protections against schools acting in bad
 6 faith. And they provided a simple way of resolving disputes, including claims of students who
 7 suffered losses due to the premature implementation of the roster caps.

8 Media accounts have estimated as many as 25,000 class members are being affected by
 9 the roster cuts. Counsel continues to hear from many athletes and their families whose lives are
 10 being turned upside down as a result of the implementation of roster caps. *See Wiegand Decl.*
 11 ¶¶2-5. Defendants' indifference, when simple fixes were offered to address a problem of their
 12 making, is stunning.

13 To receive approval, a settlement must be "fair, reasonable, and adequate." Fed. R. Civ.
 14 P. 23(e)(2). A settlement does not meet that standard when "[t]he relief that th[e] settlement
 15 provides to unnamed class members is illusory." *In re Dry Max Pampers Litig.*, 724 F.3d 713,
 16 721 (6th Cir. 2013) (rejecting settlement); *see also Koby v. ARS Nat'l Servs., Inc.*, 846 F.3d 1071,
 17 1080 (9th Cir. 2017) (rejecting settlement where plaintiffs "provided no evidence to suggest that
 18 many, if any, members of the proposed class would derive a benefit" from settlement's injunctive
 19 relief). Not only is the relief here illusory, the settlement affirmatively harms many class
 20 members. The Court should reject the settlement (again) and direct the parties to consider other
 21 options – like those Objectors proposed – that will truly "ensure that no members of the [class]
 22 who have or had a roster spot will lose it as a result of the immediate implementation of the
 23 settlement agreement." Dkt. 948 at 4.

1 Dated: May 9, 2025

2 /s/ Steven F. Molo

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